

FIRST APPEAL No 1054 of 1999

Hon'ble MR.JUSTICE J.M.PANCHAL  
and  
Hon'ble MR.JUSTICE M.H.KADRI

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- of India, 1950 of any Order made thereunder?

- [illegible]

Versus

SECRETARY, PAJARAPOLE INSTITUTION

Mr.Kodekar AGP, for appellants  
MR PV NANAVATI for Respondent No. 1

ORAL JUDGEMENT

1. Admitted. Mr. P.V. Nanavati, learned counsel, waives service of notice on behalf of respondent. At the request of learned counsel appearing for the parties, the

appeal is taken up for final hearing today.

2. By means of filing this appeal under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908, the appellants have challenged legality of judgment and award dated June 30, 1998, rendered by the learned Second Extra Assistant Judge, Vadodara, in Land Reference Case No.23 of 1982.

3. A proposal to acquire part of agricultural land bearing Survey No.757 situated at village Harni, Taluka and District Vadodara, for public purpose of construction of National Highway No.8 was received by the State Government. On scrutiny of the said proposal, the State Government was satisfied that the agricultural land of part of Survey No.757 of village Harni was likely to be needed for the said public purpose. Therefore, notification under Section 4(1) of the Land Acquisition Act, 1894 ('Act' for short) was issued which was published in the Government Gazette on October 31, 1974. The respondent, who was owner of Survey No.757, was served with notice and objections were filed by the respondent against the proposed acquisition. After considering the objections, the Special Land Acquisition Officer, Vadodara, had forwarded his report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the agricultural land admeasuring 4 Hectare 6 Are out of Survey No.757 of village Harni, was needed for the public purpose of construction of National Highway No.8. Therefore, declaration under Section 6 of the Act was made which was published in the Government Gazette on July 22, 1976. The respondent was, thereafter, served with notice for determination of compensation. The respondent appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.1,00,000/- per Hectare, but, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated December 24, 1981, offered compensation to the respondent at the rate of Rs.22,000/- per Hectare. The respondent was of the opinion that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, the respondent submitted application in writing requiring the Special Land Acquisition Officer to refer the matter to the Court for determination of appropriate compensation. Accordingly, reference was made to the District Court, Vadodara, which was numbered as Land Reference Case No. 23 of 1982. In the reference application, it was averred by the respondent that the land acquired was highly

fertile and, as it had potentiality for being used for residential and industrial purpose, compensation at the rate of Rs.1 lakh per Hectare ought to have been awarded by the Special Land Acquisition Officer. It was claimed that, in view of the over all development which had taken place near the acquired land, the Special Land Acquisition Officer was not justified in offering compensation at the rate of Rs.22,000/- per Hectare and, therefore, the reference application should be accepted. The present appellants contested the reference application by filing written statement at Exh.8 contending, inter alia, that, before determining market value of the acquired land, the Special Land Acquisition Officer had taken into consideration all the relevant factors such as fertility of the land, potentiality of the land for being used for residential and/or industrial purposes, development which had taken place near the acquired land, etc. and therefore the reference application should be dismissed. Upon rival assertions of the parties, necessary issues for determination were raised by the Reference Court. In order to substantiate the claim advanced in the reference application, Hiralal Mohanlal Mehta, who was Manager of the respondent-Institution, was examined at Exh.34. The said witness produced certificate indicating that the respondent was registered as a public trust under the provisions of the Bombay Public Trust Act. The witness deposed that Harni village is situated near the limits of Baroda Municipal Corporation and there was an over all development near the acquired land. According to the witness, the acquired land was fertile and of old tenure. The witness testified before the Court that market value of the acquired land was Rs.60,000/- to Rs.70,000/- and the respondent was earning Rs.80,000/- per year by way of sale of agricultural produces. In respect of enhanced claim of compensation, the witness produced a copy of previous award of the District Court rendered in respect of lands of village Harni as well as judgment of the High Court, by which, the determination of market value of the lands acquired earlier was confirmed by the High Court. The witness asserted before the Court that the land belonging to the respondent, which was acquired in the present case, was more fertile and valuable than the lands acquired earlier. The witness further stated that the acquired land was at a distance of 1/2 k.m. from Harni Airport. The witness, in cross examination, admitted that he had no documentary evidence to establish that the market value of the acquired land was Rs.1,00,000/- per Hectare. On behalf of the acquiring authorities, witness Jayantilal Navalram Pandya, was examined at Exh.56. The witness deposed before the Court

that the acquired land was situated in the sim of village Harni and, at the time of acquisition, no industrial units had come up near the acquired land whereas the airport of Harni was situated at the distance of 3/4 kms. from the acquired land. The witness stressed that the Special Land Acquisition Officer had made the award after considering the sale deeds of surrounding lands and determination of market value by the said officer was not inadequate. In cross examination, the witness admitted that he was not performing duty in the office of the Land Acquisition Officer when notification under Section 4(1) of the Act was published for acquiring the land. The witness also claimed ignorance regarding previous acquisition of lands of the same village. On appreciation of evidence led by the parties, the Reference Court held that compensation determined by the Special Land Acquisition Officer was inadequate. The Reference Court further deduced that previous award of the Reference Court rendered in Land Reference Case No.21 of 1984 in respect of village Harni produced at Exh.52 was relevant as well as comparable for the purpose of determining the market value of the land acquired in the present case. In the ultimate analysis, the Reference Court has held that the respondent is entitled to compensation at the rate of Rs.45,000/- per Hectare by the impugned award giving rise to the present appeal.

4. Mr. R.C. Kodekar, learned Assistant Government Pleader, submitted that previous award of the Reference Court is neither comparable nor relevant and, therefore, the same should not have been made basis for the purpose of determining market value of the land acquired in the present case. It was claimed that no cogent evidence was led by the respondent to establish that the respondent was entitled to compensation at the rate of Rs.45,000 per Hectare and, therefore, the impugned award should be set aside. In the alternative, learned counsel for the appellants submitted that in this case the Special Land Acquisition Officer had made award on December 24, 1981, i.e. prior to enforcement of Section 23(1)A of the Act and, therefore, the respondent was not entitled to additional compensation as envisaged under Section 23(1)A of the Act.

5. Mr. P.V.Nanavati, learned counsel for the respondent, contended that previous award of the Reference Court produced by the claimant at Exh.52 is comparable as well as relevant for the purpose of determining market value of the lands acquired in this case and, therefore, it cannot be said that any error is committed by the Reference Court in placing reliance on

the said award for the purpose of determining market value of the land acquired in this case. Learned counsel for the respondent further emphasized that in this case the Reference Court has awarded higher compensation than determined by the Special Land Acquisition Officer and, therefore, the respondent is entitled to additional compensation as envisaged under Section 23(1)A of the Act.

6. We have heard learned counsel for the parties at length. We have also taken into consideration deposition of witnesses recorded as well as all the documents produced by the parties before the Reference Court. The contention that previous award of the Reference Court is neither relevant nor comparable and, therefore, should not have been relied upon by the Reference Court for the purpose of determining market value of the land acquired in this case has no substance. It may be stated that the claimant, in his deposition, claimed that the land acquired in the present case was more fertile and valuable than the land acquired earlier. The witness also claimed that the income from the agricultural produces derived by the respondent from the acquired land was more than the income which was derived by the owners of the lands previously acquired. Though the witness was searchingly cross-examined, it was not brought out that the land acquired in the present case had certain disadvantages in comparison to the land acquired previously or that the lands acquired previously were better in quality than the land acquired in this case. Though witness Jayantilal Navalram Pandya was examined on behalf of the acquiring authority at Exh.56, he did not state before the Court that the lands acquired previously were not comparable to the land acquired in the present case. In the previous case, agricultural lands of village Harni were acquired for the purpose of extending 'Aerodrome Runway' pursuant to publication of preliminary notification under Section 4(1) of the Act on July 11, 1974. The Special Land Acquisition Officer, Vadodara, by his award dated November 20, 1982, had offered compensation to the claimants at the rate of Rs.15,000/- to Rs.18,500/- per Hectare. Feeling aggrieved by the said offer of compensation, references were sought and the Reference Court, in Land Reference Cases Nos. 21/84 and others, determined market value of the acquired lands at Rs.45,000/- per Hectare by judgment and award dated December 6, 1995. That award was challenged before the High Court by the acquiring authorities in First Appeal No.2953 of 1996 but the appeal was dismissed by a reasoned judgment dated May 6, 1997. It is well settled that previous award of the Reference Court in respect of

similar lands of the same village and which has become final between the parties can be taken into consideration for the purpose of determining the market value of the land acquired subsequently from the said village. As observed earlier, in the previous case, notification under Section 4(1) of the Act was published on July 11, 1974 whereas in the present case notification under Section 4(1) of the Act was published on October 31, 1974. Thus, notification under Section 4(1) of the Act which was published in the previous case is proximate in point of time to the notification published under Section 4(1) of the Act for acquiring land in this case. There is nothing on record to indicate that previously acquired lands and the land acquired in this case are not similar. Under the circumstances, we are of the opinion that the Reference Court was perfectly justified in placing reliance on previous award for the purpose of determining market value of the land acquired in this case. The previous award became final when it was confirmed by the High Court in First Appeal No. 2953/96 to First Appeal No. 2980/96. The previous award indicated that lands of village Harni were valued at Rs.45,000/- per Hectare. Under the circumstance, we are of the opinion that no error is committed by the Reference Court in holding that the respondent is entitled to compensation at the rate of Rs.45,000/- per Hectare.

7. So far as additional compensation as envisaged under Section 23(1)A of the Act is concerned, we notice that the Special Land Acquisition Officer had made award on December 24, 1981, i.e. before the Amending Act was enforced by Act No. 68 of 1984. It is well settled legal position that the claimant is not entitled to payment of additional amount of compensation under Section 23(1)A of the Act when the award proceedings had been concluded long prior to introduction of Amendment Act 68 of 1984 (See: State of Haryana vs. Smt. Kamla and others, AIR 1997 Supreme Court 313). Under the circumstance, conclusion drawn by the Reference Court that the respondent is entitled to payment of additional compensation under Section 23(1)A of the Act will have to be set aside.

8. For the foregoing reasons, the appeal partly succeeds. It is held that the respondent is entitled to compensation at the rate of Rs.45,000/- per Hectare. Direction given by the Reference Court to the appellants to pay additional amount of compensation as envisaged under Section 23(1)A of the Act is hereby set aside and

quashed. Rest of the directions given in the impugned award are not disturbed at all. There shall be no order as to costs. The Office is directed to draw decree in terms of this judgment.

9. Learned counsel for the appellants prays that jungum warrant issued by the Reference Court in execution proceedings be stayed. The impugned judgment and award is varied by this judgment and the claimant will have to execute the decree which may be drawn by the Office of the High Court pursuant to the directions given in this judgment. As the original decree passed by the Reference Court has merged into the appellate decree, question of granting stay of execution does not survive. Hence, prayer to stay jungum warrant issued by the Reference Court in the execution proceedings initiated by the Reference Court for execution of the impugned award is rejected.

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(swamy)